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ORIGINAL

Approved:



MARGARET GRAHAM

Assistant United States Attorney

Before: HONORABLE GABRIEL W. GORENSTEIN
United States Magistrate Judge
Southern District of New York

- - - - - X

COMPLAINT

UNITED STATES OF AMERICA

:

- v. -

:

Violations of
18 U.S.C. §§ 2251(a),
2252A(a)(2)(A), and 2

FRANK DITOMASSO,

:

COUNTY OF OFFENSE:

Defendant.

:

NEW YORK

- - - - - X

SOUTHERN DISTRICT OF NEW YORK, ss.:

AARON SPIVAK, being duly sworn, deposes and says that he is an Agent with the Federal Bureau of Investigations ("FBI"), and charges as follows:

COUNT ONE

(Production of Child Pornography)

1. From at least in or about December 2012 to at least in or about March 2013, in the Southern District of New York and elsewhere, FRANK DITOMASSO, the defendant, did knowingly and willfully employ, use, persuade, induce, entice, and coerce a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct and for the purpose of transmitting a live visual depiction of such conduct, and did know that such visual depiction would be transported and transmitted using a means or facility of interstate commerce and would be transmitted in and affecting interstate commerce.

(Title 18, United States Code, Sections 2251(a) and 2)

COUNT TWO

(Transportation and Distribution of Child Pornography)

2. From at least in or about November 2012 through at least in or about December 2013, in the Southern District of New York and elsewhere, FRANK DITOMASSO, the defendant, knowingly did mail and transport and ship using a means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer, child pornography; and knowingly did receive and distribute materials that contained child pornography that had been mailed and, using a means and facility of interstate and foreign commerce, shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, to wit, DITOMASSO displayed child pornography over an online video chat, from a computer located in New York, New York.

(Title 18, United States Code, Sections 2252A(a)(1) and
(a)(2)(B).)

The bases for my knowledge and for the foregoing charges, are, in part, as follows:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and am currently assigned to the Criminal Branch. Since May 2010, I have been assigned to investigate violations of criminal law relating to the sexual exploitation of children. I have participated in numerous investigations into the receipt, possession, and/or distribution of child pornography by electronic means, as well as a number of investigations into the enticement of, and illicit conduct with, minors. I have gained expertise in this area through training in classes and daily work related to conducting these types of investigations. As part of my responsibilities, I have been involved in the investigation of numerous child pornography cases and have reviewed thousands of photographs depicting children (less than eighteen years of age) being sexually exploited by adults.

2. I have personally participated in the investigation of this matter. This affidavit is based upon my personal knowledge, my review of documents, and my conversations with law enforcement agents and other people. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of

documents and the actions and statements of others are reported herein, they are reported in substance and in part, except where otherwise expressly indicated.

3. On or about December 28, 2013, the FBI New York Office received information that a female minor (the "Victim") in Florida, who was thirteen years old at the time of the offense conduct, had been downloading child pornography from a file sharing program.

4. A preliminary investigation into the Victim's computer usage revealed that she had also been uploading child pornography she had downloaded from the Internet, as well as sexually explicit images and videos of herself, to the Victim's "Dropbox" account.¹

5. The Victim was interviewed by law enforcement agents in Florida in or about January 2014. I have reviewed notes from these interviews, and I have learned, among other things, the following:

a. The Victim was instructed to download child pornography from the Internet and to upload it to her Dropbox account by an individual named "Frankie," who she met on the social networking site "Omegle."²

b. The Victim also communicated with "Frankie" using the web program "Skype," which permits users to communicate both by text and by video chat. On Skype, "Frankie"'s name was "frankiepthc."³

¹ Dropbox is a file hosting service that allows users to store files on the "cloud," data centers hosted by third parties. A user can then access the files on any computer by signing into the user's Dropbox account.

² Omegle owns and operates a web-based social media program that provides free online chat services, through which users can communicate with strangers without registering. Omegle randomly pairs a user in a one-on-one session with a stranger, and allows strangers to communicate via text and with video conferencing.

³ From my experience and training, I know that among consumers of child pornography, "PTHC" stands for "pre-teen hard core," a certain subset of child pornography.

c. During an interview on January 15, 2014, the Victim was shown two photo arrays in which she positively identified FRANK DITOMASSO, the defendant, as the Skype user "frankiepthc."

d. During at least one chat session on Skype, the Victim informed DITOMASSO that she was a minor.

e. During Skype chat sessions, DITOMASSO directed the Victim to engage in sexually provocative behavior such as revealing her genitals and using foreign objects to penetrate her genitals. DITOMASSO also directed the Victim to produce sexually explicit images and videos of herself, and then upload them to her Dropbox account.

f. In addition to this self-made child pornography, the Victim also uploaded child pornography that DITOMASSO helped her to find on the Internet.

6. From my review of the Victim's computer, I have observed multiple files of what appears to be child pornography, from my training and experience, as well as evidence of usage of Dropbox, Skype, and Omegle. The computer also contained one video and several images of the Victim nude, engaged in sexually explicit behavior.

7. I have reviewed several Skype text conversations between the Victim and DITOMASSO, which I extracted from the Victim's computer. The conversations, many of which are sexual in nature, occurred between October 3, 2012, and August 5, 2013. Examples of some of the chats are provided below:

<u>Author</u>	<u>Message</u>
<u>frankiepthc</u>	u alone?
<u>[the Victim]</u>	mhm
<u>frankiepthc</u>	wanna a hot young vid and me? <ss type="wink">;-)</ss> ⁴
<u>frankiepthc</u>	would love to see u <ss type="nerdy">(nerd)</ss>
<u>[the Victim]</u>	haha sure <ss type="smile">:)</ss>
<u>frankiepthc</u>	awesome
<u>frankiepthc</u>	1 sec, lemme use the little boys room lol
<u>[the Victim]</u>	haha okay <ss type="tongueout">:P</ss>

⁴ This and other, similar, phrases in the transcript indicate emoticons, textual portrayals of a writer's mood or facial expression in the form of icons.

frankiepthc back
 frankiepthc u gunna naughty for me too? lol
 [the Victim] mhm
 frankiepthc <ss type="tongueout">:P</ss>
 frankiepthc ready?
 [the Victim] yeah
 [the Victim] just gonna keep it on just in case someone
 walks in
 [the Victim] mhm
 [the Victim] thanks <ss type="smile">:)</ss>
 [the Victim] mhm
 [the Victim] what did you say? couldnt hear u
 [the Victim] i dont care when <ss
 type="tongueout">:P</ss>
 [the Victim] i am
 [the Victim] you can come whenever you want <ss
 type="smile">:)</ss>
 [the Victim] <ss type="smile">:)</ss>
 frankiepthc <ss type="laugh">:-D</ss>
 frankiepthc :0D<ss type="laugh">:-D</ss><ss
 type="laugh">:-D</ss>
 frankiepthc <ss type="flower">(F)</ss>
 [the Victim] <ss type="tongueout">:P</ss>
 frankiepthc <ss type="hug">(hug)</ss>
 [the Victim] <ss type="hug">(hug)</ss>
 [the Victim] haha go get cleaned up <ss
 type="tongueout">:P</ss>
 [the Victim] <ss type="smile">:)</ss>
 [the Victim] thank you
 frankiepthc no,,,
 frankiepthc THANK YOU

Author	Message
frankiepthc	want u to make me hot and hard <ss type="tongueout">:-P</ss>
[the Victim]	mm i want to make you hard too <ss type="wink">;)</ss>
frankiepthc	mmmm
frankiepthc	i LOVE seeing u cummm
frankiepthc	ur soft tits and hot pussy
[the Victim]	stooop youre making me blush
frankiepthc	i wanna make u WET
frankiepthc	was wondering
frankiepthc	dont matter at all, but ur 15 or 14?
[the Victim]	younger
frankiepthc	hmmm

<u>frankiepthc</u>	6?
<u>frankiepthc</u>	LMAO
<u>[the Victim]</u>	hah nooo
<u>frankiepthc</u>	12?
<u>frankiepthc</u>	its cool no matter what ur age is
<u>frankiepthc</u>	ur really nice and friendly and thats what
	matters <ss type="laugh">:-D</ss>
<u>frankiepthc</u>	<ss type="hug">(hug)</ss><ss
	type="heart">(heart)</ss><ss
	type="flower">(F)</ss>
<u>[the Victim]</u>	13 :3
<u>frankiepthc</u>	cool
<u>frankiepthc</u>	was hoping for younger
<u>frankiepthc</u>	LOL
<u>[the Victim]</u>	hehe :3
<u>frankiepthc</u>	<ss type="wink">;-)</ss>
<u>[the Victim]</u>	<ss type="happy">(happy)</ss>
<u>frankiepthc</u>	finish ur work
<u>frankiepthc</u>	so i can see that beautiful face and body of
	urs
<u>frankiepthc</u>	(hopefully naked) lol
<u>[the Victim]</u>	okaaaay
<u>frankiepthc</u>	ill be waiting for ya

8. I have reviewed data from the Victim's computer, which indicates that the username "frankiepthc" is associated with telephone number ending in 6864 (the "6864 Number") and a date of birth of 09/21/1979.

9. I have reviewed phone records, which indicate that FRANK DITOMASSO, the defendant, and another individual ("CC-1") are the joint subscribers for the 6864 Number. The phone records list an apartment in Harlem (the "Harlem Residence") as the current address for that number.

10. I have reviewed Skype records, which indicate that the username "frankiepthc" is associated with the email address "frankieinnycl@aol.com" (the "Target AOL Account").

11. Officers from the New York City Police Department have informed me that since on or about August 17, 2012, AOL has twice reported to authorities suspected receipt of child pornography by the Target AOL Account, and has twice reported sexually explicit chats referencing child sexual abuse and child pornography, conducted by the screen name associated with that account.

12. I have reviewed subpoena results from Omegle, which indicate that on three occasions between November 2012 and December 2013, Omegle's monitoring system flagged a user at the IP address assigned to the Harlem residence at that time for displaying child pornography over a video chat. I have reviewed screen shots taken from these chats, and have confirmed that the user was displaying what appears to be child pornography, from my training and experience.

13. I have reviewed a log of a sexually explicit chat conducted by a user accessing Omegle from the IP address assigned to the Harlem residence at that time. Excerpts of the chat log follow:

<u>Author</u>	<u>Message</u>
<u>[User]</u>	mmm\
<u>Stranger</u>	:)
<u>[User]</u>	you like watching me jerk off to young porn
<u>Stranger</u>	mmhmmm
<u>[User]</u>	mm fuck this is great
<u>[User]</u>	hhow old is she
<u>Stranger</u>	9
<u>[User]</u>	mmm
<u>[User]</u>	fuck she can take a dick good
<u>[User]</u>	cant wait till i see her getting fucked
<u>Stranger</u>	she doesnt but hav that
<u>[User]</u>	mmmmmmmmmm
<u>Stranger</u>	5 yo
<u>[User]</u>	This is getting me so hard and horny
<u>Stranger</u>	mmmmmmmmmm
<u>[User]</u>	mmmmmmmmmmmmmmmmmmmm
<u>[User]</u>	its soo tight i wana fuck that tight pussy
<u>Stranger</u>	i wanna fuck her liil ass
<u>[User]</u>	mm ill do everyhint gwith her
<u>[User]</u>	mmmmmmmmmm
<u>[User]</u>	shit almost cam had to stop jerking lol lol
<u>[User]</u>	mmmmmm damn its soo yummy
<u>[User]</u>	that guy is lucky
<u>Stranger</u>	:P
<u>[User]</u>	mmmmmmmmmmmmmmmmmmmm
<u>[User]</u>	mm ever fuck a young girl
<u>Stranger</u>	yes :)


14. Law enforcement databases indicate that FRANK DITOMASSO, the defendant, is a registered sex offender who was arrested in 2010 for possession of child pornography and was sentenced to six years' probation.

15. I have spoken with the probation officer of FRANK DITOMASSO, the defendant, who has informed me that DITOMASSO currently resides at the Harlem Residence.


16. United States Postal Service Records indicate that FRANK DITOMASSO, the defendant, receives mail at the Harlem Residence.

CONCLUSION

WHEREFORE, the deponent respectfully requests that a warrant issue for the arrest of FRANK DITOMASSO, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.


AARON SPIVAK
Agent
Federal Bureau of Investigations

Sworn to before me this
21st day of February, 2014


HONORABLE GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK